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Demilitarization of Significant Military Equipment

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Demilitarization of Significant Military Equipment

Summary

This report examines the process and problems associated with demilitarizing significant military equipment in the United States. The demilitarization of military equipment is an important issue today; evidence has shown that because of some failures in enforcement, potentially harmful weaponry and parts are finding their way into the hands of private citizens, as well as possible enemies of the United States.

The effort to dispose of and demilitarize surplus military equipment dates back to the end of World War II, when the federal government decided to reduce a massive inventory of surplus military equipment by making such equipment available to civilians. The Department of Defense (DOD) identifies and disposes of approximately \$20 billion of military surplus/excess materiel annually - items ranging from desks and chairs to full weapons systems. Recently, at a July 2006 hearing before the House Government Reform Committee, Subcommittee on National Security, Emerging Threats, and International Relations, Bennie Williams, the Defense Logistics Agency (DLA) Director of Logistics Operations, identified four target areas for managing the collection, inventory, and access to surplus and excess military equipment: (1) processing controls for batch lot items and materials requiring demilitarization; (2) processing of items received at the Defense Reutilization and Marketing Service (DRMS) coded with Local Stock Numbers; (3) improved controls regarding access to DRMS inventory assets; and (4) reducing the concurrent procurement of items available at DRMS.

Multiple agencies are involved in the control of excess and surplus defense equipment and weapons because DOD does not have the authority to fully enforce all demilitarization standards. Even the DOD demilitarization policy in place is regarded as ineffective and incomplete. There is no centralized federal authority to manage the program as each federal agency has its own policy and internal regulations which govern the acquisition, use, and disposal of demilitarized property.

Proponents who argue for the demilitarization of military equipment say that it is necessary to prevent accidental injury and death, while avoiding the unnecessary transfer of potentially harmful technology or military capability to domestic or foreign sources. Opponents, however, argue that the demilitarization issue is an attempt by the federal government to usurp the legal rights of law-abiding citizens and groups to own or possess firearms.

In the future, Congress may consider several demilitarization options ranging from: (1) permitting selective exemption; (2) appointing one agency as Executive Program Agent for all agencies; (3) convening an independent panel; (4) conducting hearings; or, (5) taking no action. This report will be updated as warranted.

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Demilitarization of Significant Military Equipment

Introduction

The effort to dispose of, and demilitarize, surplus military equipment dates back to the end of World War II, when the federal government decided to reduce a massive inventory of surplus military equipment by making such equipment available to civilians.¹ Through the establishment of the defense surplus program, the public was able to purchase military goods and supplies, as well as scrap metal. The federal government created a program to loan and donate equipment to private organizations. Some equipment has become part of historical collections, and/or is used for military exhibitions and war reenactments. Before military equipment is released to individuals or groups, it is supposed to meet certain demilitarization standards.

According to the Department of Defense (DOD), to demilitarize military equipment is to destroy its inherent military offensive or defense capability. The demilitarization process itself may include scrapping, melting, burning, or alteration of the material to prevent further use of its originally intended military or lethal purpose. Demilitarization applies equally to equipment that may be in a serviceable, or unserviceable condition, and to equipment that has been screened and rendered to be excess equipment. Once properly demilitarized, the equipment or materiel may be rendered inoperable.² As an example of what can happen when incorrect codes are assigned, an article in *Newsweek* revealed how sensitive Air Force communications parts, which required total destruction, or “Code D” when demilitarized, wound up in a world-wide auction on eBay.³

¹ This report focuses primarily on the demilitarization of military equipment; however, the disposal of surplus equipment is a closely-related issue which affects the demilitarization process. At the end of World War II, the United States had approximately \$34 billion of surplus weapons, equipment, and supplies on hand. In order to reduce equipment inventories and raise monies to repair/replace aged equipment and purchase modern weapons, the federal government increased the size and scope of its defense surplus program and sold or gave away weapons and equipment to individuals and groups. The more surplus equipment and weapons available to individuals and groups, the greater the need for equipment demilitarization.

² Demilitarization Manual, DOD 4160.21-M-1, Chapter 2.6K, Demilitarization and Disposal. Certain military equipment is classified as significant military equipment (SME), and is defined in the Code of Federal Regulations (22 CFR 120.7) as “... articles for which special export controls are warranted because of their capacity for substantial military utility or capability.”

³ Carem, Ed. A Hot Deal On Spy Gear. *Newsweek*, June 10, 2002. p. 8.

This report examines the process and problems associated with demilitarizing significant military equipment in the United States. The demilitarization issue is an important one today because evidence has shown that, due to failures in enforcement, potentially harmful weaponry and weaponry parts are finding their way into the hands of private U.S. citizens, as well as potential enemies of the United States.

The Process and the Problem

The demilitarization of significant military equipment can be best understood through an examination of the DOD surplus property disposal process.

The disposal of defense surplus property is delegated to DOD from the General Services Administration (GSA). The Federal Property and Administrative Services Act of 1949 authorizes GSA to dispose of government real and personal property, and DOD is delegated responsibility for the supervision, direction, sale, and final disposition of DOD property.⁴ DOD further delegates this responsibility to the Defense Logistics Agency (DLA), and; DLA authorizes a component group, the Defense Reutilization and Marketing Service (DRMS), to carry out the disposal activity.⁵ Prior to 1972, each branch of military service had its own independent surplus equipment program; after 1972, the Army was assigned exclusive control.⁶

⁴ DOD 4140.1R, Defense Materiel Disposal Manual. Specific guidance for property identified as Munitions List Items (MLI)/Commercial Control List Item (CCLI) can be found in DoD 4160.21-M-1, Defense Demilitarization Manual. For a complete explanation of definitions, interpretations, acronyms, and other terms of reference used in this report, see Appendix 2 of the Defense Materiel Disposal Manual.

⁵ 10 U.S.C. 2572. The demilitarization of military equipment and materiels is one of four managerial responsibilities under the DOD Donation Program. The DOD Donation Program is under the auspices of the Defense Reutilization and Marketing Service (DRMS), which is part of the Defense Logistics Agency, DOD's principal combat logistics support organization. DRMS is charged with the administration of the Defense Materiel Disposition Program worldwide in the role of the Integrated Program Manager.

⁶ See [<http://docs.usapa.belvoir.army.mil/jw2/xmldemo/r700-144/main.asp>]. Although the Army was the lead agency, prior to 1998 there were no U.S. Army regulations which governed the demilitarization policy; thus, the military services operated under the broad guidance of Title 10, United States Code (U.S.C.), Section 2572, and each program interpreted the rules differently. For example, the Center for Military History often waived the demilitarization requirements for certain organizations. Under this provision, the Center was able to give away fully operational Cobra helicopters to private citizens. Citing a lack of funding to support helicopter restoration, the Center offered helicopters in exchange for having private citizens assume the restoration costs, and granted waivers to certain organizations to exercise control over property (for example, one museum moved its property from state to state) without DOD's knowledge or permission. In 1998, then Secretary of the Army Togo West issued a regulation on army demilitarization policies. Under the new regulation, the Center would be responsible for the historical collection of military property, while the Army Materiel Command would assume responsibility for all other property.

DRMS was formed in 1972, largely to fix the problems with the defense surplus equipment program. Headquartered in Battle Creek, Michigan, DRMS has a total work force of 1,328 civilians and 11 active duty military personnel. DRMS has offices in 37 states and 14 countries (including Iraq and Afghanistan), providing support at major U.S. military installations around the world.⁷ In FY2005, DRMS processed 3.4 million line items, with an original acquisition value of over \$20 billion.⁸ Surplus and excess items can be large and small, and can range from baby bottles and desks to automobiles and full weapon systems.

DOD identifies and disposes of approximately \$20 billion dollars (acquisition value) of excess and surplus property annually (excluding ammunition, small arms, chemical weapons, nuclear weapons, or classified materials).⁹ Excess defense property goes to DRMS for redistribution within DOD or transfer to other federal agencies; property not transferred or redistributed is deemed surplus and donated to eligible state and local governments, as well as among other qualified organizations;

Figure 1. Disposition of DOD Surplus Weapons and Equipment

finally, property that remains is sold to the general public, some as scrap metal.¹⁰

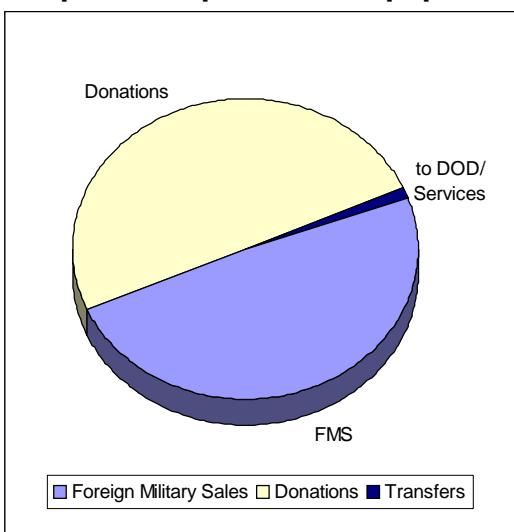


Figure 1 illustrates that less than 1% of all weapons and equipment, designated as surplus, is transferred within DOD to other agencies or to the military services. Approximately 50% of weapons and equipment are designated for the foreign military sales program, while the remaining 50% of weapons and equipment are designated for provisional transfer to qualified organizations through the DOD Surplus Equipment Program, and for public sale.¹¹

⁷ For answers to questions about the disposal of government surplus property, contact DRMS at 1-888-352-9333, or on the internet at [<http://wex.drms.dla.mil>].

⁸ Statement of Bennie Williams, Director, Defense Logistics Agency, before the House Government Reform Subcommittee on National Security, Emerging threats, and International Relations, July 26, 2006.

⁹ Control of Military Excess and Surplus Materiel. Report of the Defense Science Board Task Force, Office of the Under Secretary of Defense For Acquisition & Technology, December 1998. p. 2.

¹⁰ For a discussion of the policy governing donations, transfers, loans, and exchanges of defense surplus and excess property, see DOD 4160-21.M-Chapter 6, available online at [<http://www.drms.dla.mil/index.html>].

¹¹ The Foreign Military Sales Program is not the focus of this report. However, the Defense Science Board identified foreign military sales as a significant potential for property leaks that slipped through the DOD demilitarization process. For a general discussion of the
(continued...)

According to DRMS policy, when surplus and excess items requiring demilitarization are transferred within DOD to the military services or other DOD agencies, the responsibility for accomplishment of demilitarization is also transferred. However, when surplus and excess items requiring demilitarization are transferred or donated to qualified individuals and groups (such as state agencies, museum owners, and foundations), a provisional title transfer is granted, meaning that those qualified agencies, individuals, or groups must return the items when they are no longer in possession of them. Therefore, they are prohibited from selling or leasing the items to a third party not specifically authorized to possess them. Property released through public sale is not considered sold until the demilitarization process is completed. Since demilitarization is a condition of sale, DOD maintains that if there is no demilitarization, there is no sale. Under these circumstances, DOD maintains that private owners (or those in possession of DOD equipment) cannot pass on ownership to subsequent owners.¹²

Each item of property is assigned a demilitarization, or “demil” code.¹³ Codes are assigned when items are first manufactured for, or purchased by, DOD. Each of the military services sets the demilitarization code for each item it owns in the DOD inventory. The Defense Logistics Agency (DLA) has the ability to challenge the demilitarization code on an item if it appears an error was made, but each military service retains ultimate decision-making authority over demilitarization codes for its items. The military services assign the codes for spare parts for new aircraft, ships, weapons, supplies, and other equipment. The code determines whether the item contains military technology or capability, and establishes what must be done to an item before it is sold to the public; codes are reviewed and revalidated every 5 years.

There are nine code categories, depending on whether the item is part of the United States Munitions List Items (USMLI) or a Commerce Control List Item (CCLI). Codes range in severity; items coded with the letter “A” require no demilitarization¹⁴, while items coded with the letter “D” require “total destruction of

¹¹ (...continued)

Foreign Military Sales Program, see CRS Report RS20428, *Excess Defense Articles: Grants and Sales to Allies and Friendly Countries*, by Richard Grimmett.

¹² DLA Form 1822, November 2001. DOD has revised its end-use certificate to make ownership issues clearer. An end-use certificate is a statement regarding the disposition and use of property which must be completed by all applicants for MLI/CCLI property prior to acceptance by the federal government; this document is required by the DOD Trade Security Office prior to the property’s removal from DOD. The applicant certifies his/her status as: (1) a citizen of the United States of America; (2) lawfully admitted to the United States for Permanent Residence and maintains such residence under the Immigration and Nationality Act, as amended; (3) a citizen of another country; or (4) an official of a foreign government entity in the United States.

¹³ See [http://www.demil.osd.mil/documents/app3_99.pdf] for a complete list of military equipment demilitarization codes and coding guidance.

¹⁴ According to Bennie Williams, DLA Director of Logistics Operations, DLA manages over 70% of the “Code A” line items received by DRMS. Of particular concern is that many of these items were in excess yet in serviceable condition; to increase reutilization with DOD, (continued...)

item and components so as to preclude restoration or repair to a usable condition by melting, cutting, tearing, scratching, breaking, punching, neutralizing, etc.”¹⁵ Demilitarization rules vary according to the type of organization that is gaining possession of the property. Prior to 1998, the demilitarization policy allowed museums to receive fully operational tanks. DOD is aware of one museum that has M-60 tanks fully operational, but the guns on the tanks have been rendered inoperable.

Recent Congressional Hearings on DOD Demilitarization and Disposal Policy

During the 109th Congress, several hearings and related investigations were held to reexamine the DOD surplus and excess property system. A new investigation revealed that many of the problems uncovered during previous congressional hearings were still present. Sensitive military equipment continued to be sold and/or donated to the public.

At the July 2006 hearing before the House Government Reform Committee’s Subcommittee on National Security, Emerging Threats, and International Relations, the Government Accountability Office (GAO) testified that from FY2002 through FY2004, DOD disposed of \$33 billion in excess property, of which \$4 billion was reported to be in new, unused, or excellent condition. Of the \$4 billion, approximately 12% (or \$495 million) of this property was used within DOD; the remaining \$3.5 billion in property was transferred or donated outside of DOD, sold to the public, or destroyed. As part of the probe into the inventory control process, investigating GAO staff purchased sensitive military equipment items that were improperly sold to the public. At the same time, DOD continued to purchase many of the same items.¹⁶

At the July hearing, Bennie Williams, DLA Director of Logistics Operations, discussed DOD’s efforts to improve the performance of the surplus and excess property inventory management and control system. Mr. Williams identified four target areas for managing surplus military equipment: (1) processing controls for batch lot items and materials requiring demilitarization; (2) processing of items received at the Defense Reutilization and Marketing Service (DRMS) coded with

¹⁴ (...continued)

there is now greater coordination of effort among OSD, DLA, and the military services.

¹⁵ DOD 4160.1M, Appendix 3. According to the Defense Science Board, less than five percent of surplus defense material is destroyed or rendered unusable through demilitarization.

¹⁶ Government Accountability Office. DOD Excess Property - Control Breakdowns Present Significant Security Risks and Continuing Waste and Inefficiency. Statements of Gregory D. Kutz, Managing Director, and John P. Ryan, Assistant Director, Forensic Audits and Special Investigations. July 25, 2006, 10 pages.

Local Stock Numbers; (3) improved controls regarding access to DRMS inventory assets; and (4) reducing the concurrent procurement of items available at DRMS.¹⁷

During the 106th Congress, Congress had directed DOD to submit a plan to address problems associated with the disposal of surplus and excess defense materials.¹⁸ In floor debate on the FY1999 defense authorization bill, Senator Charles Grassley compared the equipment demilitarization and disposal problems as similar to the problems identified some 25 years earlier, at Senator John McClellan's 1972 committee hearing on the same issue.¹⁹ Senator Grassley observed that:

The problem with lax disposal isn't new. The first congressional hearings on this topic were conducted in the early 1970s. At that time, Congress received testimony that the Pentagon's program for ensuring the disposal of surplus items was in shambles. Under current practice, the Pentagon has decided the answer to the question of what to do with surplus parts is to sell them to the highest bidder, with practically no controls in place...Mr. President, the depots which sell sensitive military surplus have become thriving terrorist flea markets. In fact, the Pentagon even has a world wide web homepage to advertise military surplus for sale — some of it classified. Who knows, right now some of Saddam Hussein's henchman could be browsing this homepage looking for spare parts or new weapons...Finally, I'd like to sum up the situation we have here. Despite congressional oversight going back to Senator McClellan's 1972 hearings, nothing has really changed. Therefore, it's clearly time for Congress to step up to the plate and take action. That's why I'm offering this amendment to the DOD authorization bill to give law enforcement an enhanced ability to catch arms smugglers who are targeting military surplus.²⁰

On July 8, 1997, Senator Grassley, as Chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, called for an investigation into the disposition of government surplus items, citing media reports that indicated that disposal procedures were "unacceptably loose."²¹ At the hearing,

¹⁷ Statement of Bennie Williams before the House Government Reform Committee, Subcommittee on National Security, Emerging Threats and International Relations, July 25, 2006. The hearing was titled "DOD Excess Property: Inventory Control Breakdowns Present a Security Risk."

¹⁸ Section 1051. Plan for Improved Demilitarization of Excess and Surplus Defense Property. FY1999 Defense Authorization Act, H.R. 3616, P.L. 105-261, October 17, 1998.

¹⁹ In July 1972, the Permanent Subcommittee of the Senate Committee on Governmental Affairs, under the chairmanship of Senator John McClellan, conducted hearings on the DOD surplus program. Witnesses testified to the improper public sale of automatic weapons, missiles, and sensitive components of military weapon systems. U.S. Senate Committee on the Judiciary, Subcommittee on Administrative Oversight, July 8, 1972.

²⁰ Statement of Senator Grassley during the floor debate of the FY1999 Defense authorization bill. *Congressional Record*, Volume 144, Number 84, 144 Cong Record S6991, 105th Congress, 2nd Session, Wednesday, June 24, 1998, p. 1011-1014.

²¹ Statement of U.S. Senator Charles Grassley, Chairman, Senate Judiciary Subcommittee on Administrative Oversight and the Courts. Hearing on the Department of Defense Disposition of Government Surplus Items. Senate Hearing, 105-227, Judiciary hearing 105- (continued...)

the chief witnesses were Dave Barrington and Jack Blackway. Mr. Barrington was a former DOD criminal investigator with the DOD Trade Security Control Office, who had been interviewed as part of a three-month media investigation into the surplus weapons program. He had resigned from his position in protest over the poor enforcement procedures. Mr. Blackway was the head of the DOD Trade Security Controls Office. Both Mr. Barrington and Mr. Blackway testified to the existence of many program deficiencies, including a lack of resources and staff. Mr. Blackway expressed the opinion that the current staff and resources were insufficient to handle the broad range of demilitarization program responsibilities. Senator Grassley noted in his remarks before the hearing that “Mr. Barrington has been fundamental in alerting the public to the demilitarization problems and has been interviewed many times on the subject. You may have read about his interviews with *U.S. News* and also *60 Minutes*.²² According to transcripts of the hearing, the 1996 media investigations were a major factor in the decision to conduct the congressional investigation and hold the 1997 hearings.

The media investigation referred to was a three-month, joint investigation by journalists from the television news program *60 Minutes*, along with journalists from the periodical *U.S. News and World Report*, which uncovered significant problems in the military surplus weapons program.²³ The investigation examined Pentagon records and U.S. Customs Service documents, and conducted interviews with many federal officials. The investigation identified three major deficiencies:

- **DOD had incorrectly coded many weapon components in the military equipment inventory.** As a result of the push for reducing the size of the surplus military weapon and equipment inventory at the end of the Cold War, as well as to generate cash for new equipment and modernized weapons, DOD held weapon and equipment auctions at over 170 military installations. In so doing, DOD inadvertently mislabeled many military parts that should have been earmarked for total destruction. As a result, these parts were made available for sale at auctions, where scrap metal dealers could purchase them cheaply and by the pound. At the hearing, it was reported that some dealers would sort through the mountains of

²¹ (...continued)

30. July 8, 1997. Several witnesses with direct responsibility for aspects of surplus and demilitarization policies gave testimony at the hearing. They included Dave Barrington, Former Investigator, Defense Logistics Agency; Bonnie Tischler, Assistant Commissioner for the Office of Investigations, U.S. Customs Service; John Hensley, Special Agent, U.S. Customs Service; Lee Dolan, Senior Special Agent, U.S. Customs Service; Capt. Randle Bales, Associate Executive Director, Defense Logistics Center; and Jack Blackway, Chief of DOD’s Demilitarization Policy.

²² Excerpts from the opening statement of Senator Charles Grassley from the transcript of the July 8, 1997 hearing on the disposal of government surplus parts and equipment. Senate Hearing 105-227, Judiciary Hearing 105-30.

²³ Profile: Snafu. Military and Weapons Components Coded for Destruction before Demilitarization are Available at Auctions and through Locator Services to Civilians.” *60 Minutes*, CBS, Inc. December 1, 1996.

scrap metal to find precious metals and sell them for a modest profit. Other dealers learned that many mislabeled parts were functioning pieces from sophisticated weapons systems that, when assembled, would produce a fully engaged weapon of military capability. Many of these parts were discovered through the practice of “dumpster diving.”²⁴ As a result, many buyers purchased technologically-advanced, military components.

- **DOD made available large quantities of usable military weapon components.** According to the investigation, a federal task force investigating leaks in the military surplus system seized some 75 tons of usable parts from Cobra attack helicopters, parts, it said, that DOD should never have released. In another case, a reporter from *U.S. News and World Report* purchased for \$325 the component which guides the HAWK missile to its target. In this case, the dealer who sold the item was unaware of the sensitive nature of the weapon components.
- **DOD was ineffective in staffing, supervision, and exercising program controls in the operation and management of the program.** According to Dave Barrington, a former DOD investigator, DOD personnel suffered from a lack of proper training in identifying and classifying military surplus equipment. The sheer quantities of equipment received on a weekly basis meant that some equipment that should have been completely destroyed was sold in perfectly good, working condition. For example, DOD regulations called for the complete destruction of Cobra helicopter parts. On the one hand, investigators saw Cobra helicopters being destroyed at one outlet; on the other hand, at another surplus outlet in a different state, two fully functioning Cobra helicopters were built with surplus parts and sold.

As a result of the hearings, DOD designated one new staff position for the Trade Security Controls Office. Currently, the DOD Trade Security Controls Office is comprised of the Demilitarization Policy Program Manager, the DOD Trade Security Controls Program Manager, and a Demilitarization and Trade Security Controls Specialist. Despite the addition of one new staff position, Mr. Blackway states that the demilitarization policy and procedures remain largely unchanged today; that despite efforts to improve the program, many of the same problems identified in the congressional hearings in both 1972 and 1997 continue to exist today.²⁵

²⁴ See [<http://www.science.uva.nl/~mes/jargon/d/dumpsterdiving.html>]. Dumpster-diving is the practice of sifting through refuse from an office or technical installation to extract confidential data, especially security-compromising information, or raiding the dumpsters behind buildings where producers and/or consumers of high-tech equipment are located, with the expectation of finding discarded, yet still valuable, equipment.

²⁵ Views and comments attributed to DOD were offered by Mr. Jack Blackway, DOD Demilitarization Program Manager, and his staff, during an interview conducted at his office
(continued...)

Government Accountability Office Investigations

Prior to 2006, GAO had conducted several investigations into the DOD Surplus and Excess Property Program. As early as 1990, GAO had identified the DOD Surplus Property Program as a “high risk” program because of the potential for waste, fraud, abuse, and mismanagement. The Senate Committee on Governmental Affairs and the House Committee on Government Reform supported GAO’s efforts, and GAO conducted a series of investigations into various aspects of the surplus property program management.²⁶

Recent Legislative Developments

Section 8016 of the FY2007 DOD Appropriations Act (H.R. 5631) prohibits the use of DOD funds to demilitarize or dispose of M-1 Carbines, M-1 Garand rifles, M-14 rifles, .22 caliber rifles, .30 caliber rifles, or M-1911 pistols. Section 8069 of the same bill prohibits the transfer of certain ammunition, such as center-fire cartridge and “armor penetrating” or “armor piercing” except under a contract with DOD to perform demilitarization. Such a contract would require the contractor to demonstrate that the equipment is rendered incapable of reuse by the demilitarization process, or is used to manufacture ammunition subject to a contract with DOD or the manufacture of ammunition for subject to a Department of State License for Permanent Export of Unclassified Military Articles.

During the 107th Congress, several bills were introduced that, passed, would require a change in DOD demilitarization policy. Two provisions of H.R. 5010, the FY2003 DOD appropriations, required the demilitarization of surplus firearms and made it unlawful for DOD to transfer certain armor-piercing ammunition to any

²⁵ (...continued)
on December 3, 2001.

²⁶ Since 1990, GAO has conducted a number of investigations into the operation of the DOD surplus and disposal programs, as discussed in the following reports: Property Disposal: Controls Needed to Preclude DOD Release of Unsafe Surplus M151 Jeeps. General Accounting Office, GAO/NSIAD-91-10. January 2, 1991, 10 p.; Statement of David R. Warren, Director, Defense Management Issues, National Security and International Affairs Division, General Accounting Office, before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and Oversight, House of Representatives. GAO/T-NSIAD-97-257. September 12, 1997, 10 p.; Memorandum to the Honorable Floyd D. Spence, Chairman, Committee on National Security, House of Representatives, from David Walker, Comptroller General, General Accounting Office. B-280096, August 1998; and Defense Inventory: Management of Surplus Usable Aircraft Parts Can Be Improved. General Accounting Office, GAO/NSIAD-98-7, October 2, 1997, 12 p.; Defense Inventory: Action Needed to Avoid Inappropriate Sales of Surplus Parts. General Accounting Office, GAO/NAIAD 98-182, August 1998, 26 p.; Defense Inventory: Property Being Shipped to Disposal Is Not Properly Controlled. General Accounting Office, GAO/NAIAD-99-84. July 1999, 24 p.; Defense Inventory: Inadequate Compliance With Controls for Excess Firearms and Other Sensitive Items. Report to the Chairman, Committee on Armed Services, house of Representatives. General Accounting Office, GAO/NAIAD-00-27. November 1999, 20 p.

nongovernmental entity, unless the ammunition was rendered incapable of reuse.²⁷ The Senate version of the FY2002 DOD appropriations bill would have, if enacted, required the demilitarization of surplus firearms.²⁸ The Senate-version of the FY2002 DOD authorization bill would have made it unlawful for any person to possess equipment not fully demilitarized; that legislation became a provision known as Section 1062 of Senate bill 1438, the Senate-version of the FY2002 National Defense Authorization bill. Section 1062 was defeated in the Conference Committee.

In 1998, Congress directed DOD to draft proposed legislation designed to clarify the authority of the federal government to recover significant military equipment released without adequate demilitarization²⁹; DOD's legislative proposal eventually became known as Section 1062. Section 1062 would have required the Secretary of Defense to establish regulatory standards to govern the demilitarization of equipment not covered under current demilitarization policy, and do the following: (1) define classes of military equipment requiring demilitarization before disposal, and what constitutes demilitarization for each class of significant military equipment; (2) ensure that the demilitarized equipment would not pose a significant risk to public safety, and have no uniquely military capability or significant capability for use as a weapon; (3) place the burden of proof of ownership of such military weapons and equipment on the person in possession of the equipment (and not on the federal government); (4) provide compensation to those persons whose property was confiscated by the Federal government; (5) grant the Secretary of Defense the authority to delegate broad powers to the Attorney General to investigate suspected violations, including inspection and seizure of the property.

According to DOD, the Senate Armed Services Committee made some changes to its original legislative proposal by incorporating the recommendations of the Defense Science Board Task Force. The Task Force studied the issue and issued a report titled "Control of Military Excess and Surplus Materiel."³⁰ In the report, the

²⁷ P.L. 107-248, Sections 8019 and 8090.

²⁸ Section 8020 of H.R. 3338.

²⁹ Section 1051. Plan for Improved Demilitarization of Excess and Surplus Defense Property. FY1999 Defense Authorization Act, H.R. 3616, P.L. 105-261, October 17, 1998.

³⁰ *Control of Military Excess and Surplus Materiel*. Report of the Defense Science Board Task Force, Office of the Under Secretary of Defense For Acquisition & Technology. December 1998, 62 p. Defense Science Board Report, p. 32. The Task Force recommended that Congress give DOD the authority for the entire demilitarization of military equipment, as the majority of property in question is property that DOD owns or formerly owned. The report concluded that DOD should be the final decision authority for all DOD demilitarization and control items, and thus should negotiate a Memorandum of Understanding with GSA, giving DOD final approval for distribution of demilitarization and controlled items, or initiate legislation to establish DOD decision authority for all demilitarization and controlled items, as well as for equipment (like tanks) that is not covered by the current regulation. The report recommended that, given the overlaps and gaps in control of property due to the involvement of multiple agencies, DOD should adopt a "cradle to grave" principle in the vigorous enforcement of demilitarization laws. Non-

(continued...)

Task Force identified six sources of potential leaks of materiel requiring demilitarization and control, and found that privately-owned museums constituted the most significant source of leakage. The Task Force concluded that no single agency had the lead authority or responsibility for controlling such equipment, which resulted in overlaps and gaps in coverage, that law enforcement efforts were largely resource-dependent, and that the demilitarization coding process was too complicated.³¹

Current Issues on Demilitarization

Views expressed by DOD and various public interest groups are in stark contrast to each other. DOD officials believe that the passage of the proposed, but deleted, Section 1062 of the FY2002 DOD authorization bill would have allowed DOD to correct past demilitarization errors and write new rules to address the demilitarization of all items.³² In contrast, however, several groups of military equipment enthusiasts spoke out against the bill, including its use of the term “significant military equipment.”

DOD has reportedly sought to gain control over military equipment in the possession of individuals or groups, and has long advocated for tighter military equipment demilitarization policies. However, the DOD Demilitarization Program Manager (DDPM) maintains that the program lacks authority, staff, and resources. The DDPM could not estimate how much it would cost to implement a full-scale demilitarization program, as it cannot estimate the large number of items that fall under the category of “significant military equipment.”

More specifically, the DDPM believes that the program lacks resources to implement a life-cycle (from cradle to grave) management program. Three staff members administer demilitarization and trade security control policy. Eleven criminal investigators make up the DOD’s Trade Security Controls Office, whose job is to ensure that nothing is released from DOD without proper controls. Due to the sheer volume of the materiels received, they can only investigate the most egregious cases. DOD maintains that efforts to investigate and recover this property have been less than successful. When DOD officials have referred suspected cases to the

³⁰ (...continued)

DOD agencies could then continue to distribute excess materiel with DOD approval of demilitarization and controlled items. GSA disagreed with this recommendation.

³¹ The Defense Science Board Task Force concluded that, in some cases, DOD property was destroyed that could have been sold, resulting in lost revenue from sales, while some DOD property was sold which should have been demilitarized, resulting in an increase in the potential threat for acts of domestic or foreign terrorism. For further discussion, see Wichner, David. Bin Laden Jet Trainer Was Stored in Tucson. *Arizona Daily Star* (web version). November 18, 2001.

³² Views and comments attributed to DOD were offered by Mr. Jack Blackway, DOD Demilitarization Program Manager, and his staff, during an interview conducted at his office on December 3, 2001.

Department of Justice, no action has been taken. According to Mr. Blackway, DOJ has cited a lack of definitive authority to take action.³³

In addition, DOD does not always know where its military equipment, loaned to museums, is located. According to DOD, there have been instances where museums have moved, traded, and sold property without DOD's permission. DOD has maintained that equipment loaned to private museums is given for a "conditional display," meaning that the museum does not have full ownership of the property. No museum has a clear title to the property; DOD maintains ownership, as in the case of property released through public sale. Property is not considered sold until the demilitarization process is completed.

Another issue is the different agency authorities for demilitarization policies. The responsibilities for both the surplus weapons program and the demilitarization of military equipment are dispersed, and thus create some jurisdictional problems. The GSA, and the Departments of Commerce, Defense, Justice³⁴, State, and Treasury, all have separate rules governing the disposal of demilitarized property. For example, materiel that is classified as significant military equipment is listed on the United States Munitions List (USML), which is under the jurisdiction of the Department of State³⁵. The State Department is also responsible for direct commercial sales and transfers. The Department of Commerce is responsible for items on the Commercial Control List Items (CCLI).³⁶ In contrast, DOD surplus disposal falls under the jurisdiction of the DOD Trade Security Controls Office, which has limited authority for the demilitarization of military equipment. The Task Force concluded that while DOD had strengthened its control and monitoring of surplus and donations, GSA's more generous, management control guidelines needed considerable improvement.³⁷

³³ The DDPM believes that DOJ does not place a high priority on these cases, and that there is some reluctance on DOJ's part to investigate such cases due to its past missteps in some civil law enforcement situations (such as Ruby Ridge and Waco).

³⁴ Under Section 1111 of H.R. 5005, the Homeland Security Act of 2002 (P.L. 107-296), the Bureau of Alcohol, Tobacco, and Firearms (formerly the ATF) will be transferred from the Department of the Treasury to the Department of Justice, and renamed as the "Bureau of Alcohol, Tobacco, Firearms, and Explosives."

³⁵ The following explanation was provided by Jack Blackway, Director, DOD Trade Security Controls Office. "The United States Munitions List (USML), 22 CFR 120-130, International Traffic in Arms Regulations (ITAR) lists and defines materiel that is militarily unique (SME) and therefore requires special export controls; the remainder of the materiel on the USML that is not designated as SME, is afforded special conditions for release from DOD control, including end-use certification and clearance of recipients. Additionally, DOD requires these same controls on dual-use materiel listed in 15 CFR 774, Commerce Control List, which is under the jurisdiction of the Department of Commerce for export control."

³⁶ *Control of Military Excess and Surplus Materiel*. Report of the Defense Science Board Task Force, Office of the Under Secretary of Defense For Acquisition & Technology. December 1998, p. 31.

³⁷ Ibid, p. 42

A number of groups, including some veteran's groups and military weapons enthusiasts, were opposed to the proposed Section 1062. They take great pride in owning the relics of war; some have channeled their affinity for military weaponry into attending war reenactments, military air shows and expeditions, and owning private gun collections. Others have organized private museums of military weapons and artifacts.

Some groups were concerned that if the proposed Section 1062 had been enacted into law, DOD would have been able to confiscate the item from whomever had possession of it, and be required to reimburse the owner for the fair market value of the item (or scrap metal) in the event that DOD found demilitarization costs to be prohibitive. According to the provisions of Section 1062, DOD would have been required to develop both a policy and a process for implementation of the new policy, and a notification process would have been made public.³⁸

The Aircraft Owners and Pilots Association (AOPA) had strongly opposed the passage of the proposed Section 1062. In a letter to the chair of the House Armed Services Committee, AOPA President Phil Boyer acknowledged that Section 1062 was proposed largely due to the discovery that some surplus military equipment was improperly coded, resulting in sensitive military technology having found its way into the public sector. He believed that Section 1062 served a valid military purpose, but argued that the definition of what is considered "significant military equipment" was broad, ambiguous, and might lead to an unnecessary destruction of military aircraft.³⁹ Mr. Boyer offered to work with the Conference Committee members to draft an alternative piece of legislation that would narrow the scope of Section 1062.⁴⁰

Mr. Boyer stressed that certain aircraft (possibly aircraft not demilitarized) had been carefully maintained over the years and were now serving useful purposes. In a joint letter to the House Armed Services Committee, AOPA and the Experimental Aircraft Association (EAA) stressed that the nation faced a serious pilot shortage, and that having historical aircraft visible at public air shows would encourage youth to consider careers in military or commercial aviation. In a letter to the Senate Armed Services Committee members, EAA also described the terms "significant military equipment" and "demilitarization" as broad and ambiguous, stating that "legitimately acquired ex-military aircraft from many eras, commonly known as war birds, pose no threat to the public, but instead are used to display our history as living aviation heritage."⁴¹

³⁸ Section 1062 would have required those in possession of such equipment to prove that they legally owned it. Ultimately, the issue of who lawfully owns an item would be a matter for the court.

³⁹ In response, the DDPM offered the following: "However, SME is clearly defined in 22 CFR, and, while broad, is not ambiguous. Merely removing the guns from a military attack aircraft does not negate its military capability over civilian aircraft nor preclude replacing those guns obtained from a different source."

⁴⁰ [<http://www.aopa.org/whatsnew/newsitems/2001/011012letter.html>]

⁴¹ [http://www.EAA.org/news/news/demil_letter.html] The letter goes on to say that "All (continued...)"

Policy Options for Congress

Several policy options are available to Congress to reexamine the current United States demilitarization policy. They include (1) permit selective exemption; (2) appoint one agency as Executive Program Agent for all federal agencies; (3) convene an independent panel; (4) conduct hearings; and (5) take no action.

Permit Selective Exemption

Congress may introduce a revised version of the previously proposed Section 1062, but make certain types of military equipment and weapons exempt from the demilitarization process. As an example, Congress may exempt any equipment that is commercially available or exempt specific types of equipment. Congress may also seek to set a specific time frame for DOD to develop a regulatory policy.

Establish One Agency as Executive Agent for All Federal Agencies

Congress may introduce legislation to give one federal agency the statutory authority for the demilitarization of all military equipment. Given DOD's responsibility to protect public safety and provide for national security, some argue that DOD should be in charge of all demilitarization policies.⁴²

Another option would be to make the Department of Homeland Security the Executive Program Agent. Some would argue that the Department of Homeland Security is a logical choice, given its mission to coordinate domestic security, law-enforcement, border security, emergency management, intelligence and the anti-terrorist activities of the federal government. By firmly establishing the federal government's military equipment demilitarization policy under the Department of Homeland Security, Congress might help overcome a "turf war" and avoid crossing political and institutional lines among older, more established, federal agencies.⁴³

The drawback is that the demilitarization policies of several federal agencies overlap with DOD's, and Congress would likely meet resistance from federal agencies unwilling to cede authority. Congress would need to clarify the roles and responsibilities of each agency. In doing so, Congress could create a new accountability to govern future demilitarization and trade security controls policy.

⁴¹ (...continued)

functioning armament systems have been removed from each aircraft prior to receiving its airworthiness certificate from the Federal Aviation Administration (FAA). Furthermore, the FAA mandates an annual inspection to ensure ongoing compliance with this and other safety requirements."

⁴² *Control of Military Excess and Surplus Materiel*. Report of the Defense Science Board Task Force, Office of the Under Secretary of Defense For Acquisition & Technology. December 1998, 62 p.

⁴³ Peckenpaugh, Jason. Bush Proposes Massive Overhaul of Homeland Security Agencies. *Government Executive*, June 6, 2002.

Convene Independent Panel

Congress may convene an independent panel on demilitarization activities with panel members representing various constituencies, federal government agencies, and the general public. The panel could be directed to study the issue and to develop a policy and a process for future demilitarization activities. In the past, Congress has generally accepted and implemented the recommendations of such independent groups.⁴⁴ However, by their very nature, their conclusions may not have popular support with some Members of Congress or the public.

Conduct Hearings

In an exercise of its oversight function, Congress may want to reexamine the final report of the Defense Science Board Task Force on the *Control of Military Excess and Surplus Materiel*, and hear testimony from panel members as well as demilitarization experts from both defense and law enforcement communities.

By conducting hearings, Congress may invite testimony from individuals or groups that may not have surfaced during the debate over the proposed Section 1062. Such public forums can generate new information as well as a more intense look at any unintended consequences of actions Congress may consider. Hearings might assist Members who are unfamiliar or uncommitted to any particular point of view.

Take No Action

Congress may elect to take no action. By taking no action, some might argue, Congress can preserve the citizens' right to bear arms and the right to privacy. Congress may also avoid a difficult battle with veterans groups that represent a strong base for political support. Taking no action might be a difficult position to support if any undemilitarized equipment, formerly owned by DOD, is used offensively against the United States.

⁴⁴ In response, the DDPM believes that the convening of an independent panel is unnecessary, as the demilitarization program has been fully studied in the past.